

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE ESTATE OF JAMES F. BRUTSCHE,
et al.,

No. C05-1538Z

V.

ORDER

CITY OF FEDERAL WAY, et al.,

Defendants.

This matter comes before the Court on Defendants City of Federal Way, City of Auburn, City of Kent, City of Renton, City of Tukwila, and the Port of Seattle (“the Cities” and the Port’s”) Motion for Summary Judgment Re: Plaintiffs’ 42 U.S.C. § 1983 Claims and State Law Claims, docket no. 134, as to the federal claims.¹ The Court DENIES IN PART, GRANTS IN PART, and DEFERS IN PART the motion as to the federal claims, as outlined below.

11

11

¹ After oral argument on April 6, 2007, the Court GRANTED IN PART the motion and DISMISSED with prejudice Plaintiffs' state law claims against the Cities and the Port, which were set forth in Plaintiffs' Seventh, Eighth, Tenth and Eleventh Causes of Action, for the reasons stated on the record in open court. See Minutes, docket no. 187.

ORDER 1-

1 **BACKGROUND**

2 The Cities and the Port have formed a SWAT team, called the Valley Special
 3 Response Team, or “VSRT,” by Interlocal Cooperative Agreement. Muenster Decl., docket
 4 no. 149, Ex. G (Interlocal Cooperative Agreement). One of the purposes of the SWAT team
 5 is to serve “narcotic/high risk search warrants.” Id., Ex. G at 734. The SWAT team is
 6 governed by an executive board whose members are the police chief, or his/her designee,
 7 from each participating jurisdiction. Id., Ex. G at 735. This board develops the SWAT
 8 team’s policies, which take precedence over any conflicting policies of an individual
 9 jurisdiction. Id., Ex. G at 736.

10 This case arises from the SWAT team’s execution of a search warrant on July 10,
 11 2003 on the Brutsche property located at 426 Naden Avenue, in Kent, Washington, and the
 12 resulting injuries to James Frederick Brutsche (“Jim Brutsche”). Muenster Decl., docket no.
 13 71, Ex. E (Search Warrant). Jim Brutsche resided in a mobile home on the property at the
 14 time. Further factual background is presented in the Court’s Order, docket no. 113, at 1-4,
 15 and in the Discussion Section below.

16 **DISCUSSION**

17 **I. Summary Judgment Standard**

18 Summary judgment shall be rendered “if the pleadings, depositions, answers to
 19 interrogatories, and admissions on file, together with the affidavits, if any, show that there is
 20 no genuine issue as to any material fact and that the moving party is entitled to a judgment as
 21 a matter of law.” FED. R. CIV. P. 56(c).

22 **II. Fourth Cause of Action: Damages to the Parent/Child Relationship**

23 Plaintiffs allege that Defendants violated Jim Brutsche’s and his parents’ Fourteenth
 24 Amendment substantive due process rights. First Am. Compl. ¶¶ 159-169. The Court
 25 previously granted summary judgment on Mr. Brutsche’s parents’ substantive due process
 26 claims as alleged against certain “uninvolved” officers – namely, Rankin, Sidell, Villa,

1 Courtney, and Cline² – because Plaintiffs failed to provide any evidence that the officers had
2 any “purpose to cause harm unrelated to the legitimate object of arrest.” See Order, docket
3 no. 113, at 14-16 (quoting County of Sacramento v. Lewis, 523 U.S. 833, 836 (1998)). At
4 the pretrial conference and with Plaintiffs’ consent, the Court dismissed the Estate’s
5 substantive due process claims as alleged against these same officers based on the same
6 rationale. Minutes, docket no. 188.

In support of the present motion for summary judgment, the Cities and the Port argue that Plaintiffs have similarly failed to provide any evidence that the Cities and the Port had any purpose to cause harm unrelated to the legitimate object of arrest. Plaintiffs, however, do not have to prove specific intent on the part of a municipality to achieve liability under Monell v. New York City Department of Social Services, 436 U.S. 658 (1978). See Biberdorf v. Oregon, 243 F. Supp. 2d 1145, 1155-56 (D. Ore. 2002). Lewis explicitly did not address the issue of municipal liability. Lewis, 523 U.S. at 838 n.2 (“the issue of municipal liability is not before us”); see also Moreland v. Las Vegas Metro. Police Dep’t, 159 F.3d 365, 372-73 (9th Cir. 1998) (applying Lewis’s “purpose to commit harm” standard to officers, not municipalities). The Cities and the Port failed to provide any case law in which a plaintiff was required to show a purpose to cause harm on the part of a municipality in order to achieve Monell liability.

19 Accordingly, the Court DENIES the Cities' and the Port's summary judgment motion
20 as to the Fourth Cause of Action, and Plaintiffs' substantive due process claims against the
21 Cities and the Port remain for trial.

III. Sixth Cause of Action: Municipal Liability for Defendant Cities and Port

23 Plaintiffs allege that the Cities and the Port are liable under 42 U.S.C. § 1983

² The Court also dismissed the claim against Officer Adam, but later reinstated the claim against Officer Adam on Plaintiffs' motion for reconsideration. See Order, docket no. 113, at 16; Order, docket no. 131, at 4-5.

1 (“Section 1983”) because their policies, practices, and customs caused the unreasonable use
 2 of force in the execution of a narcotics search warrant and because the police chiefs ratified
 3 the officers’ unreasonable use of force after the raid and failed to take disciplinary action
 4 against any officers, thus violating Plaintiffs’ Fourth Amendment rights. First Am. Compl.
 5 ¶¶ 182-194. “[T]he use of force to effect an arrest is subject to the Fourth Amendment’s
 6 prohibition on unreasonable seizures.” *Chew v. Gates*, 27 F.3d 1432, 1440 (9th Cir. 1994).

7 In their opening brief, the Cities and the Port argue that the officers were adequately
 8 trained and that Plaintiffs have failed to show deliberate indifference on the part of the Cities
 9 and the Port. Plaintiffs respond that this is not a “deliberate indifference” failure to train
 10 case and contend that the Cities and the Port “blur theories of § 1983 municipal liability
 11 which in fact are analytically distinct.” Pls.’ Opp’n, docket no. 148, at 3, 16. Plaintiffs
 12 correctly assert that “deliberate indifference” applies in failure to train, supervise and screen
 13 cases, but not in cases where the municipality acts affirmatively in adopting a policy, makes
 14 a decision to deploy the SWAT team, or ratifies the SWAT team’s actions after the fact, as
 15 alleged in this case. See *Biberdorf v. Oregon*, 243 F. Supp. 2d at 1154-56 (“deliberate
 16 indifference is a critical element when the policy at issue is one of omission or failure to act”
 17 but is not an element in Section 1983 cases where a plaintiff is attacking an affirmative
 18 policy or action). The Court concludes that deliberate indifference is not applicable to
 19 Plaintiffs’ Section 1983 claim against the Cities and the Port.

20 Here, the reasonableness of the officers’ use of force on Mr. Brutsche is at issue, and
 21 the municipalities which employ the officers are being sued under Section 1983.
 22 Municipalities are “persons” subject to suit under 42 U.S.C. § 1983. See *Monell*, 436 U.S. at
 23 691 n.55. However, “a municipality cannot be held liable *solely* because it employs a
 24 tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a
 25 *respondeat superior* theory.” *Id.* at 691 (emphasis in original). Section 1983 “imposes
 26 liability on a government that, under color of some official policy, ‘causes’ an employee to

1 violate another's constitutional rights." *Id.* "City policy 'need only cause the constitutional
 2 violation; it need not be unconstitutional per se.'" *Watkins v. City of Oakland*, 145 F.3d
 3 1087, 1092 (9th Cir. 1998) (quoting *Chew v. Gates*, 27 F.3d at 1444). "City policy 'causes'
 4 an injury where it is 'the moving force' behind the constitutional violation." *Chew v. Gates*,
 5 27 F.3d at 1444 (quoting *Monell*, 436 U.S. at 694). To prevail at trial, Plaintiffs need to
 6 "show that the specific use of force . . . violated the Constitution, and that city policy caused
 7 the unconstitutional application of force in this instance." *Chew v. Gates*, 27 F.3d at 1444
 8 n.12. "Where a plaintiff claims that the municipality has not directly inflicted injury, but
 9 nonetheless has caused an employee to do so, rigorous standards of culpability and causation
 10 must be applied to ensure that the municipality is not held liable for the actions of its
 11 employee." *Bd. of County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 405
 12 (1997).

13 Plaintiffs assert that the SWAT team's policies, not the individual municipalities'
 14 policies, caused the unreasonable use of force against Jim Brutsche. The Cities and the Port
 15 do not dispute that the chiefs of police of each defendant city are the final policymakers for
 16 their respective cities in making the SWAT team's policies. Thus, it is undisputed that the
 17 SWAT team's policies constitute official policies of the Cities and the Port, and the issue
 18 before the Court is whether the SWAT team's policies caused (i.e., were the moving force
 19 behind) the alleged unreasonable use of force against Jim Brutsche. Plaintiffs contend the
 20 SWAT team's policies give rise to *Monell* liability in three ways.

21 First, Plaintiffs argue that the SWAT team's policies caused the unreasonable use of
 22 force because they call for the deployment of a SWAT team in narcotic search warrants,
 23 regardless of the quantity of drugs suspected to be involved and regardless of the fact that the
 24 police have no information that any weapons are present on the property to be searched. The
 25 specific policy at issue here is the SWAT team's operation manual's provision for "Dynamic
 26 Warrant Service," which deploys the SWAT team for "high-risk" warrants. Muenster Decl.,

1 docket no. 150, Ex. H. Warrants are categorized as “high-risk” based on the following seven
 2 factors:

3 “High-Risk”

4 a) The circumstances are unusual and beyond the capabilities of normal
 warrant service.
 5 b) The location is heavily fortified.
 6 c) Shooters are known to be present.
 7 d) Weapons are present and being used (high power, high volume, automatic,
 etc.).
 8 e) Gang members are known to be present.
 f) The propensity for violence exists.
 g) Dynamic entry is necessary to prevent destruction of evidence.

9 Muenster Decl., docket no. 150, Ex. H (VSRT’s “Dynamic Warrant Service” policy) at 1,
 10 Index page 8058. Chief James Kelly testified that contrary to Plaintiffs’ assertion, the
 11 presence of weapons is a consideration in the risk analysis. Suppl. Gavery Decl., docket no.
 12 153, Ex. F (Kelly Dep.) at 30:6-7. This is plain from the above-listed factors. Chief Kelly
 13 also testified in his deposition that the SWAT team could be deployed even if the police have
 14 no information that the person has weapons, depending on the other factors. Id. at 30:20-
 15 31:7. He explained that a numerical count of these factors does not automatically mean
 16 deployment, and that alternatives are explored. Id. at 31:24-32:6.

17 In the present case, the parties dispute whether the warrant should have been
 18 classified as “high-risk.” Plaintiffs argue that it was unreasonable to deploy the SWAT team
 19 to serve this warrant based merely on two \$20 controlled buys of a controlled substance (i.e.,
 20 methamphetamines). See Muenster Decl., docket no. 149, Ex. K (Danaher Decl.) at 5. The
 21 SWAT team’s Dynamic Warrant Service policy, however, allows for other considerations to
 22 be taken into account in assessing risk, and other considerations were, in fact, taken into
 23 account. See, e.g., Suppl. Gavery Decl., docket no. 153, Ex. B (Statement of Detective
 24 David McKenzie) at 867 (suspecting the manufacture of methamphetamines); id. Ex. C
 25 (Bridgman Dep.) at 14-17 (testifying to prior controlled buys of narcotics by King County
 26 Detectives Bridgman and Herndon and prior search warrant on the Brutsche property); Ex. E

1 (Villa Decl.) ¶¶ 5-6 (basing high risk status on the “logistical layout of the property” and “the
 2 known lifestyle of those involved in the methamphetamine trade”); id. Ex. D (Majak Decl.) ¶
 3 4 (noting that “persons involved in the methamphetamine trade are typically paranoid,
 4 irrational and are often armed to protect themselves from other criminals”); id. Ex. E (Villa
 5 Decl.) ¶ 7 (noting that Valley Narcotics Enforcement Team (“VNET”) detectives had
 6 reported that the property owner allowed multiple suspected drug users to sleep/live
 7 throughout the property).

8 The Court need not resolve this dispute. The Court’s task on summary judgment is to
 9 determine whether there is any evidence that the SWAT team’s Dynamic Warrant Service
 10 policy caused the alleged unreasonable use of force against Jim Brutsche, not to determine
 11 whether the SWAT team’s deployment was reasonable. Plaintiffs have failed to provide any
 12 evidence that Jim Brutsche was injured by any reason specific to the SWAT team’s policies
 13 and procedures. Because the Dynamic Service Warrant policy, which was used to decide to
 14 deploy the SWAT team in this case, cannot be considered the cause of, or the moving force
 15 behind, Jim Brutsche’s injuries, the Court GRANTS IN PART the Cities’ and the Port’s
 16 motion for summary judgment, and DISMISSES with prejudice the Sixth Cause of Action to
 17 the extent that it is based on the VSRT’s Dynamic Warrant Service policy.

18 Second, Plaintiffs argue that the SWAT team’s policies violate the standards in
 19 Graham v. Connor, 490 U.S. 386, 396 (1989). Graham discusses standards for determining
 20 whether the force used to effect a particular seizure is “reasonable” under the Fourth
 21 Amendment:

22 [This determination] requires a careful balancing of the nature and quality of
 23 the intrusion on the individual’s Fourth Amendment interests against the
 24 countervailing governmental interests at stake. . . . [T]he test of reasonableness
 25 under the Fourth Amendment . . . requires careful attention to the facts and
 26 circumstances of each particular case, including *the severity of the crime at
 issue, whether the suspect poses an immediate threat to the safety of the
 officers or others, and whether he is actively resisting arrest or attempting to
 evade arrest by flight.* . . . The “reasonableness” of a particular use of force
 must be judged from the perspective of a reasonable officer on the scene, rather

1 than with the 20/20 vision of hindsight. The calculus of reasonableness must
 2 embody allowance for the fact that police officers are often forced to make
 3 split-second judgments – in circumstances that are tense, uncertain, and rapidly
 4 evolving – about the amount of force that is necessary in a particular situation.

5 490 U.S. at 396-97 (internal quotations and citations omitted) (emphasis added).

6 Plaintiffs have not identified any SWAT team policy that violated Graham and caused
 7 an unreasonable use of force, but they appear to be attacking the Valley Special Response
 8 Team’s “Use of Force” policy. Muenster Decl., docket no. 149, Ex. I. The VSRT’s Use of
 9 Force policy states, in pertinent part, as follows:

10 NEED: Members shall use a reasonable amount of force necessary to
 11 accomplish the arrest, overcome resistance to arrest, defend themselves or
 others from harm, or to control a situation. The degree of force used should be
 in direct relationship to the amount of resistance perceived by the member, or
 the *imminent* threat the person poses to the member or others.

12 Id. at Index page 4906 (emphasis added). Plaintiffs assert that this policy does not consider
 13 the Graham “severity of the crime” factor because the quantity of drugs suspected to be
 14 found is not a required consideration of the policy. Plaintiffs have provided no evidence that
 15 the quantity of drugs should be the basis for determining the severity of the crime and the
 16 concomitant need for force. Furthermore, the severity of the crime, as well as the other
 17 Graham factors, are not requirements for every use of force policy, but rather are
 18 considerations for a court in determining the reasonableness of force ex post facto.

19 Plaintiffs also assert that this policy impermissibly considers “imminent” threats to
 20 officers, which, they argue, is different and broader than the “immediate” threat recited in
 21 Graham. Even if the Court is to accept that “imminent” does not have a time limitation, as
 22 Plaintiffs argue was testified to by Lieutenant Villa, Plaintiffs have provided no evidence that
 23 the policy’s use of “imminent” rather than “immediate” had an effect on the officers’ use of
 24 force against Jim Brutsche. Because Plaintiffs cannot prove that the “imminent” language in
 25 the VSRT’s Use of Force policy caused, or was the moving force behind, Jim Brutsche’s
 26 injuries, the Court GRANTS IN PART the Cities’ and the Port’s motion for summary

1 judgment, and DISMISSES with prejudice the Sixth Cause of Action to the extent that it is
 2 based on the VSRT's Use of Force policy.

3 Third, Plaintiffs argue that the SWAT team's policies violate the Fourth Amendment's
 4 "knock and wait" requirement, and they rely on Richards v. Wisconsin, 520 U.S. 385 (1997),
 5 and Wilson v. Arkansas, 514 U.S. 927 (1995). See Pls.' Opp'n at 20. These cases discuss
 6 how the Fourth Amendment protects against unreasonable searches and seizures by requiring
 7 that, absent "countervailing law enforcement interests," an officer must knock on the door
 8 and announce his presence before using force to gain entry. Wilson, 514 U.S. at 929, 934,
 9 936 (holding that the "common law 'knock and announce' principle forms a part of the
 10 reasonableness inquiry under the Fourth Amendment"); see also Richards, 520 U.S. at 387.
 11 The knock-and-announce requirement could give way "under circumstances presenting a
 12 threat of physical violence" or "where police officers have reason to believe that evidence
 13 would likely be destroyed if advance notice were given." Wilson, 514 U.S. at 936; see also
 14 Richards, 520 U.S. at 394 ("In order to justify a 'no-knock' entry, the police must have a
 15 reasonable suspicion that knocking and announcing their presence, under the particular
 16 circumstances, would be dangerous or futile, or that it would inhibit the effective
 17 investigation of the crime by, for example, allowing the destruction of evidence."). "[L]ower
 18 courts [have] the task of determining the circumstances under which an unannounced entry is
 19 reasonable under the Fourth Amendment." Wilson, 514 U.S. at 396; see also Richards, 520
 20 U.S. at 394 ("[I]t is the duty of a court . . . to determine whether the facts and circumstances
 21 of the particular entry justified dispensing with the knock-and-announce requirement."). The
 22 showing of exigent circumstances "is not high, but the police should be required to make it
 23 whenever the reasonableness of a no-knock entry is challenged." Richards, 520 U.S. at 394-
 24 95.

25 Here, Plaintiffs argue that the VSRT's Operations Manual's "Verbal Commands"
 26 policy does not comply with the Fourth Amendment. In particular, Plaintiffs point to the

1 following language in the policy for entering buildings: “A designated officer will announce
2 clearly and loudly ‘POLICE, SEARCH WARRANT, GET DOWN’ *as the team enters.*”
3 Muenster Decl., docket 150, Ex. H (VSRT’s Verbal Commands) at 1, Index page 8047
4 (emphasis added). On its face, however, the Verbal Commands policy does not dispense
5 with the knock and announce requirement. See id. at 1-2, Index pages 8047-8048 (referring
6 to plans that call for “knock and announce” entries). Indeed, the plan in this case included a
7 knock and announce element. See Muenster Decl., docket no. 71, Ex. I (VSRT Operations
8 Order) at Index page 986 (SWAT team members “1-8 will stack on the south 1 side door,
9 *knock and announce*, breach front door if necessary, deploy NFDD, enter and clear
10 residence”) (emphasis added). This case does not involve a policy with a per se exception to
11 the knock-and-announce requirement. Cf. Richards v. Wisconsin, 520 U.S. 385, 391-94
12 (1997) (rejecting the Wisconsin court’s blanket exception to the knock-and-announce
13 requirement for felony drug investigations). Accordingly, the Verbal Commands policy does
14 not violate the Fourth Amendment by eliminating the knock-and-announce requirement.³

15 The Court's inquiry does not stop here. Plaintiffs have characterized the Fourth
16 Amendment requirement as a "knock and wait" rather than a "knock and announce"
17 requirement, and Plaintiffs have asserted that the Verbal Commands policy does not comply
18 with the Fourth Amendment because it allows simultaneous announcement and entry. The
19 Richards and Wilson cases relied upon by Plaintiffs do not address the need for officers to
20 wait after knocking and announcing their presence. Plaintiffs' entire "knock and wait"

³ Whether or not the officers in this case knocked and announced their presence in conformity with the Fourth Amendment is a factual issue disputed by the parties, and one for the jury to decide in connection with determining the liability of the officers. Compare Suppl. Decl. Gavery, docket no. 153, Ex. G (Philips Dep.) at 48-49 (witness inside mobile home testifying that the police made four announcements over a loudspeaker, “Kent SWAT Police. Come out with your hands in the air,” over a ten second period prior to entry); Muenster Decl., docket no. 71, Ex. Y (Ulrich Dep.) at 15-17, 24-26 (witness inside mobile home not testifying to any knocking or announcements when explaining how he knew the police were present). However, the Court concludes that this factual issue is not relevant to the knock and announce claim against the municipalities.

1 argument is set forth in four sentences in their brief in opposition to Defendants' motion for
 2 summary judgment, and it is not fully developed. See Pls.' Opp'n at 20. At oral argument,
 3 Plaintiffs further developed their "knock and wait" argument, asserting that Jim Brutsche's
 4 injuries would not have occurred had the officers waited a reasonable time after announcing
 5 their presence. But Plaintiffs still failed to cite any relevant case law, such as United States
 6 v. Banks, 540 U.S. 31 (2003),⁴ to support their contention that the Fourth Amendment
 7 requires officers to wait after announcing their presence. Defendants also failed to apply
 8 United States v. Banks to support their contention that the SWAT team was justified in
 9 dispensing with the "knock and wait" requirement.⁵ See Defs.' Reply at 8. Because the
 10 issues have not been adequately developed by either party, the Court DEFERS IN PART the
 11 Cities' and the Port's motion for summary judgment on the "reasonable wait time" issue.

12 In addition to Plaintiffs' contentions that the SWAT team's policies give rise to
 13 Monell liability, Plaintiffs argue that the Cities and the Port are liable under Section 1983 for
 14 the unreasonable use of force on Jim Brutsche because the executive board ratified the
 15 officers' use of force by approving of the actions of the SWAT team after the raid took place.
 16 The Ninth Circuit summarizes the ratification doctrine as follows:

17 The ratification doctrine, asserted as a basis for municipal liability, originated
 18 in St. Louis v. Praprotnik, 485 U.S. 112 (1988). There, a plurality of the
 19 Supreme Court stated that '[i]f the authorized policymakers approve a
 20 subordinate's decision and the basis for it, their ratification would be
 21 chargeable to the municipality because their decision is final.' Id. at 127. But
 the sentence from Praprotnik must be read in context. The Court held in
Praprotnik that to establish municipal liability, a plaintiff must 'prove [] the
 existence of an unconstitutional municipal policy.' Id. at 128. A single

22 ⁴ United States v. Banks addressed the issue of "how to go about applying the standard
 23 of reasonableness to the length of time police with a warrant must wait before entering without
 24 permission after knocking and announcing their intent in a felony case," and concluded that the
 25 reasonableness of the wait time should be assessed using a "totality of the circumstances"
 analysis. Banks, 540 U.S. at 35, 41.

26 ⁵ As with the knock and announce issue, the facts need to be developed at trial as to
 whether and for how long the officers waited after announcing their presence and authority, and
 as to whether exigent circumstances were present.

1 decision by a municipal policymaker ‘may be sufficient to trigger section 1983
 2 liability under Monell, even though the decision is not intended to govern
 3 future situations,’ Gillette v. Delmore, 979 F.2d 1342, 1347 (9th Cir. 1992)
 4 (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 480-81 (1986)), but the
 5 plaintiff must show that the triggering decision was the product of a
 6 ‘conscious, affirmative choice’ to ratify the conduct in question. Gillette, 979
 7 F.2d at 1347. In the present case, Haugen has made no such showing. . . .
 [H]ere there are no facts in the record that suggest that the single failure to
 discipline Haugen rises to the level of such a ratification. See, e.g., Santiago v.
Fenton, 891 F.2d 373, 382 (1st Cir. 1989) (refusing to hold that the ‘failure of
 a police department to discipline in a specific instance is an adequate basis for
 municipal liability under Monell’). The City of Puyallup and the Puyallup
 Police Department are therefore entitled to summary judgment.

8 Haugen v. Brosseau, 339 F.3d 857, 875 (9th Cir. 2003), rev’d on other grounds, 543 U.S.
 9 194 (2004). Plaintiffs assert, without any evidentiary citations, that “. . . the executive board
 10 of the SWAT team reviewed the deployment of the SWAT team in this case at its executive
 11 board meeting after the raid took place, and approved of the same. Chief Kelly testified that
 12 the board typically inquires into whether there was property destruction or injury to officers
 13 or civilians.” Pls.’ Opp’n at 16. Although the Cities and the Port do not contest these facts,
 14 see Defendants’ Reply at 9, Plaintiffs have failed to show that the VSRT’s executive board
 15 made a “conscious, affirmative choice” to ratify the use of force in question. See Haugen,
 16 339 F.3d at 875. Moreover, as in Haugen, there are no facts in the record that suggest that
 17 the single failure to discipline the officers who injured Jim Brutsche rises to the level of such
 18 a ratification. Accordingly, the Court GRANTS IN PART the Cities’ and the Port’s motion
 19 for summary judgment, and DISMISSES with prejudice the Sixth Cause of Action to the
 20 extent that it is based on the ratification doctrine.

21 **CONCLUSION**

22 The Court DENIES IN PART, GRANTS IN PART, and DEFERS IN PART
 23 Defendants Cities’ and Port’s Motion for Summary Judgment, docket no. 134, as to the
 24 federal claims, as follows:

25 (1) The Court DENIES the motion as to Plaintiffs’ Fourth “Damage to the
 26 Parent/Child Relationship” Cause of Action under 42 U.S.C. § 1983 and the Fourteenth

1 Amendment. Accordingly, Plaintiffs' substantive due process claims against the Cities and
2 the Port remain for trial.

3 (2) The Court GRANTS IN PART and DEFERS IN PART the motion as to Plaintiffs'
4 Sixth "Municipal Liability of Defendant Cities and Port" Cause of Action under 42 U.S.C. §
5 1983 and the Fourth Amendment. The Court GRANTS IN PART the motion and
6 DISMISSES with prejudice Plaintiffs' Sixth Cause of Action to the extent that it is based on
7 the VSRT's Dynamic Warrant Service policy, the VSRT's Use of Force policy, and the
8 ratification doctrine. The Court DEFERS IN PART the motion on the "reasonable wait
9 time" issue.

10 DATED this 11th day of April, 2007.

11 
12 THOMAS S. ZILLY
13 United States District Judge

14
15
16
17
18
19
20
21
22
23
24
25
26